Supreme Court, U.S.
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No. 78-1842

In the Supreme Court of the United States

OCTOBER TERM, 1978

SAM GOLDMAN, PETITIONER

v.

MERRILL LYNCH, PIERCE, FENNER & SMITH, INC., ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE FEDERAL RESPONDENT IN OPPOSITION

WADE H. MCCREE, JR.
Solicitor General
Department of Justice
Washington, D.C. 20530

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Petitioner seeks review of two related decisions of the United States Court of Appeals for the Eighth Circuit. In the first decision, respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") recovered a judgment for deficiency in petitioner's commodities margin trading account, and the court of appeals affirmed (Pet. App. A4-A13). In the second, the court of appeals affirmed orders of the district court directing execution on petitioner's "book-entry" Treasury bills to satisfy the judgment (Pet. App. A14-A26). The Secretary of the Treasury is not a party to the first proceeding and expresses no views with respect to that aspect of the petition.

With respect to the second proceeding, petitioner contends (Pet. 20-23) that regulations of the Department of the Treasury prohibit the district court from subjecting his book-entry Treasury bills to execution and judicial process. This claim is insubstantial for the reasons stated by the court of appeals (Pet. App. A22-A25).

31 U.S.C. 754(a) authorizes the Secretary of the Treasury to borrow money for the United States by issuing Treasury bills "under such regulations and upon such terms and conditions as the Secretary * * * may prescribe * * *." Under this authority, the Secretary issues and sells so-called "book-entry" Treasury bills from time to time subject to regulations set forth at 31 C.F.R. Part 349 and the announcements made by the Secretary prior to each issue. Those regulations expressly provide (at 31 C.F.R. 349.2) that book-entry Treasury bills are subject "to the extent applicable" to 31 C.F.R. Part 306, the general regulations governing United States securities. 31 C.F.R. 306.100 states that the Secretary will recognize judicial process "affecting the ownership of or interest in transferable securities," given evidence of a final judgment. This latter regulation is unquestionably valid. See *Free* v. *Bland*, 369 U.S. 663, 670 (1962). The Secretary's determination that the regulation subjecting securities to judicial process is applicable to book-entry Treasury bills is a reasonable construction of his own regulation and is entitled to substantial deference. *FCC* v. *Pottsville Broadcasting Co.*, 309 U.S. 134, 143 n.6 (1940); *Udall* v. *Tallman*, 380 U.S. 1, 18 (1965); *Northern Indiana Public Service Co.* v. *Izaak Walton League*, 423 U.S. 12, 15 (1975).

Petitioner relies on an expansive reading of 31 C.F.R. 350.16(b) to insulate his book-entry account from judicial process. That section, however, provides that the Treasury will not accept "notices" of pending judicial proceedings in favor of creditors. As the court of appeals held (Pet. App. A23-A24), Section 350.16(b) simply disclaims any binding effect of a mere notice of a pending judicial proceeding against a book-entry account owner. It does not purport to suspend the general rule subjecting securities to execution after final judgment.

Petitioner also contends (Pet. 21) that Part 306 (allowing execution) is incorporated only to the extent it is "applicable" and that it is not applicable because Part 306 concerns "transferable securities." This argument falls of its own weight, for it reduces to a nullity the express incorporation of Part 306 in 31 C.F.R. 349.2 inasmuch as essentially all of Part 306 relates to transferable securities. In any event, book-entry Treasury bills are transferable securities as defined in 31 C.F.R. 306.2(q) (see Merrill Lynch Br. in Opp. 18-19).

In sum, petitioner argues for a construction that would "create a sanctuary for judgment debtors" (Pet. App. A23). The court of appeals properly rejected this result.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.
Solicitor General

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